

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4133 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

B C MEHTA

Versus

INDUSTRIES COMMISSIONER

Appearance:

MR YN OZA for Petitioners

GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/12/98

ORAL JUDGEMENT

Heard Learned Advocate Mr.Yatin Oza on behalf of the petitioner and learned AGP Mr.S.T.Mehta on behalf of the respondents.

2. The petitioner no.1 is a share-holder and Director of petitioner no.2 which is a private limited company registered under the provisions of Indian Company Law. That the petitioner have challenged the legality, validity and propriety of decision taken by the

respondents and communicated to the petitioner no.2 by respondent no.1 vide letter dated 4.3.86, copy of which is produced vide Annexure H.

The petitioners have prayed the relief of claiming appropriate writ or direction to the respondents to set aside and quash the impugned decision communicated to the petitioner no.2, as per Annexure H and further direct the respondents to issue a Pioneer Registration Certificate in respect to scheme announced by the State of Gujarat under GR No. INC-1580-1766/PPD, dated 27.8.1980.

3. That vide impugned decision of the respondents communicated to the petitioner no.2, the respondents have cancelled "Pioneer Status" given to the petitioner no.2 under GR No. INC-1580-1766-PPD dated 27.8.1980 and communicated to the petitioner vide Provisional Pioneer Registration Category - II Certificate, copy of which is produced at Annexure D to the petition.

4. That the State Government by G.R.No. MSC-1076-7637 (1) J dated 22.12.77 introduced a package of incentives for the promotion of industries in Rural and backward area to achieve a more balanced growth and avoid further re-congestion of developed areas and large cities, effective from 1.11.77. That the said package of incentives consisted of (1) Cash subsidy on fixed capital investment & (2) Sales Tax benefit in terms of either exemption from payment of sales tax or interest free sales tax loan. That with a view to accelerate the development of industries and strengthen the trend of industries coming to developing areas of the State, the government decided to introduce new sales tax benefits in lieu of sales tax exemption/loan scheme w.e.f. from 1.6.80. That the cash subsidy of earlier package was retained as it was. That accordingly the scheme was announced w.e.f. 1.6.80 for a period of 5 years i.e. upto 31.5.85. That the copy of the said scheme is produced on record by respondents vide Annexure 1 to the affidavit in reply of running page 68 of the compilation.

5. It is averred and contended by the petitioners that the petitioner came to know about the abovestated scheme as introduced by the State Government through his advocate and in order to avail the benefits offered under the said scheme, the petitioner no.2 company was incorporated in the year 1983 with the object and purpose of starting a pulse mill. That the petitioner no.2 applied to the State Government on 22.3.83 for issuance of pioneer unit registration certificate and submitted

necessary documents. That the copy of the said application is produced by the petitioner vide Annexure A. That the respondent no.2 called for some more particulars from the petitioners on receipt of above stated application and the petitioner forwarded the requisite information vide reply dated 9.5.83. That thereafter the Joint Commissioner of Industries issued a provisional Pioneer Registration Certificate Category II dated 19.7.83 to the petitioner, the copy of which is produced vide Annexure D. It is alleged by the petitioner that thereafter instead of giving a permanent pioneer certificate to the petitioner the respondent no.1 cancelled the above stated provisional Pioneer Certificate issued to the petitioner no.2 vide communication dated 15.11.83, copy of which is produced at Annexure E. That the petitioners challenged the said action of the respondent cancelling the Provisional Pioneer Registration Certificate issued to petitioner no.2; by filing Special Civil Application No. 826/1984. That the High Court of Gujarat allowed the said petition vide order dated 5.9.85 (Coram : N.H.Bhatt, J as he then was) and set aside the decision communicated to the petitioner by letter dated 15.11.83 and directed present respondents to grant hearing to the petitioners before passing any order on the subject matter. That the petitioner has produced a copy of the order vide Annexure G to the petition. That thereafter the respondent no.1 granted hearing to the petitioner no.1 and heard the representation of the petitioners on 19.11.85 and on the basis of material facts placed on file again cancelled the Provisional Pioneer Registration Certificate Category - II as issued to petitioner no.2 and communicated the decision vide letter dated 19.11.85 to the petitioner which decision is impugned in the present proceedings.

6. Shri Yatin Oza, Learned Advocate appearing on behalf of the petitioner has urged following 2 submissions:-

1. That the impugned order is illegal, unreasonable, arbitrary and unsustainable in law as it is contrary to the scheme announced by the State Government which is binding to the respondent no.1 & 2.
2. That apart from announcement of scheme vide notification dated 27.8.80 on account of issuance of Provisional Pioneer Registration Certificate Category - II dated 19.7.83 the respondents have made representation to the petitioner that the petitioner shall be entitled to the benefits of

incentives as provided under the said scheme and in order to avail such benefits, the petitioner has made investment of huge amount to the tune of Rs.7,40,000/- by purchasing land in a backward area and installing machinery to start a pulse mill. That thereby the petitioner having changed his position on the representation of respondent through said scheme and provisional certificate, the respondents are now estopped from retracting the terms by way of cancelling the "pioneer status" given to the petitioner no.2 under the said scheme and petitioner is entitled to claim the relief as prayed in the petition on "the basis of the doctrine of promissory estoppel" as made applicable under our legal system.

Shri Yatin Oza has referred to and relied on the following authorities in support of his submissions:-

1. Gujarat State Financial Corporation Vs. M/s. Lotus Hotels Pvt.Ltd. 1983 (3) SCC Page 379.
2. Gujarat State Financial Corporation Vs. M/s. Lotus Hotels Pvt.Ltd. 23(2) GLR Page 49.
3. Union of India & Others Vs. Godfrey Philips India Ltd. 1986 SC 806 and
4. Maheshchandra Chandra Vs. Regional Manager, Uttar Pradesh Financial Corporation & Others. 1993 SC Page 935.

7. As against that learned AGP Mr.S.T.Mehta urged on behalf of the respondents that claim made by the petitioner is misconceived and unsustainable in law. That the scheme announced by the State Government vide GR dated 27.8.1980 is in continuation of earlier GR of the State Government dated 22.12.77 and according to the said GR, the State Government has excluded certain industries from the purview of the said scheme. That "pulse mill" is one of the industries which is excluded from the purview of the said scheme and as such the petitioner is not entitled to claim benefit of any of the incentives under the said scheme as the petitioner has intended and started the pulse mill through petitioner no.2 company. Relying on the observations made by the Supreme Court in the matter of M.P.Sugar Mills reported vide AIR 1979 Supreme Court Page 621. Shri S.T.Mehta has urged that Joint Industries Commissioner who appears to have issued Provisional Pioneer Registration Certificate Category II dated 19.7.83 to petitioner no.2 is either given through oversight or otherwise as no such certificate could be issued for excluded industries under the scheme as

provided under the GR dated 22.12.1977. Shri Mehta has also submitted that in order to avail the benefit offered under the said scheme the petitioner as applicant ought to have known all the particulars of the said scheme which are set out in the GR dated 27.8.1980. That the earlier GR of State Government dated 22.12.1977 excluding certain industries from the purview of the said scheme has been specifically stated in the GR dated 27.8.80 and thereby petitioner cannot contend that the petitioner had no knowledge that benefits under the said scheme were not available to the industry of pulse mill. That the petitioner either having knowledge or otherwise had applied for the benefit of the said scheme which were prohibited under the scheme now cannot claim the application of promissory estoppel which is based on equity. That the provisional certificate issued by Joint Commissioner is not binding to the State of Gujarat as it is issued without authority and contrary to the provisions of the scheme and thereby issuance of such certificate cannot create any equity in favour of the petitioner under the doctrine of promissory estoppel. In order to support the said submissions Shri Mehta has referred to and relied on the observations made by Chief Justice Mr.P.N.Bhagwati (as he then was) in the matter of M.P.Sugar Mills Vs. State of Uttar Pradesh reported in AIR 1979 SC Page 621. Shri Mehta has also referred to and relied on observations made by the Supreme Court in the matter of Vasantkumar Radhakishan Vora Vs. The Board of Trustees of the Port of Bombay reported in AIR 1991 SC Pg.14. he has also relied on observations made by the Supreme Court in the matter of Union of India Vs. Godfrey Philips India Ltd reported in AIR 1986 SC 806.

8. It is significant to note that nowhere in the petition the petitioner has averred as to when, how and under what circumstances the petitioner came to know about the said scheme offered by the State Government under the GR of 27.8.1980. It may be noted that in Para 2 of the petition it is averred by the petitioner that the petitioner learnt through his advocate at a relevant time that if certain conditions are fulfilled, initially, the Provisional Pioneer Registration Certificate would be issued and thereafter a final certificate will be issued. That thereby in the year 1983 the petitioner no.2 company was incorporated for the purpose of starting pulse mill. It is further averred by the petitioner that for the issuance of Provisional Pioneer Registration Certificate following conditions were required to be fulfilled:-

- i. Project should make an investment of atleast 50 lacs in Fixed Capital Investment or it should

employ atleast 100 workers.

- ii. That the location should be in the Backward district of State of Gujarat.
- iii. That the unit should be in such location i.e. at a particular location (town or village) and in a radius of 8 kms around it, there should not be more than two units with fixed capital investment of atleast Rs.50 lacs or employing 100 or more permanent workers within a radius of 8 kms.
- iv. The location should be beyond 24 kms. of the Municipal Corporation of Ahmedabad and Baroda beyond 10 kms. from the municipal limits of Surat, Rajkot, Jamnagar & Bhavnagar with a population not exceeding 1 Lakh as per the census of 1971 and further the unit should not be water intensive and power intensive.

8(A) Learned Advocate Mr.Y.N.Oza could not point out any fact from the petition as to whether any other conditions as prescribed under the scheme by the State Government under the GR dated 27.8.1980 was within the knowledge of the petitioner on the date when petitioner made application for Provisional Registration Certificate. That mere perusal of GR dated 27.8.1980, copy of which is produced at Annexure 1 to the affidavit in reply, clearly suggests that the entire scheme is based on the basis of the package of incentives introduced by the State government under the earlier GR dated 22.12.1977. That the petitioner if had bonafide desire to avail incentive offered under the said scheme, as a prudent industrialist ought to have gone through entire scheme as stated in GR of 22.12.1977 and 27.8.1980. That GR dated 22.12.1977 specifically states that 15 industries as listed in para 16 are excluded from the purview of the said scheme. That at item no.2 industries of rice mill, pulse and cereal mill and spice mill are mentioned. Under the circumstances it is difficult to hold that petitioner no.1. as Director of the petitioner no.2 had no knowledge on the date when he made application for Pioneer Registration Certificate to avail benefits of the said scheme, to effect that such benefits are not available for the industry of pulse mill. In view of the said finding, I hold that the announcement of the said scheme vide GR dt. 29.8.80 does not amount to any representation to the petitioner for making any investment to incorporate petitioner no.2 company and to purchase land and machinery to start a industry of a pulse mill. That in the absence of such

representation, the petitioner cannot invoke the doctrine of promissory estoppel to claim appropriate writ or direction against the respondents to set aside the cancellation of impugned decision and to direct the respondents to issue a Pioneer Registration Certificate to the petitioner no.2.

9. Shri Oza has heavily relied on the factum of issuance of provisional Pioneer Registration Certificate Category - II dated 19.7.83, copy of which is produced at Annexure D. He has submitted that issuance of such certificate itself is a representation to invoke the doctrine of promissory estoppel. In my view no such submission can be accepted either on facts or in law. It may be noted that a party would be eligible to apply for a provisional Pioneer Registration Certificate provided the party has fully complied with the requisite conditions prescribed under the scheme and one of the condition prescribed in the scheme being certain industries including a pulse mill having been excluded from the purview of the scheme, the petitioner could not have applied for the Provisional Pioneer Registration Category Class - II and as such issuance of such certificate by oversight or otherwise cannot be said to be representation that the benefits under the said scheme shall be available to the petitioner. Furthermore, the doctrine of promissory estoppel has its limitation and it has no application if the act done on behalf of the Government by any Officer is without authority. That in the instant case affidavit filed by Shri R.N.Kapadia, Asst. Industries Commissioner on behalf of the respondent clearly suggest the fact sworn in Para 2 that petitioner not being eligible for Pioneer Registration Certificate under the GR of the Government the certificate issued through oversight cannot bind the government. Furthermore as pointed out in the affidavit in reply, the petitioner had produced the certificate issued by Chartered Accountant of the petitioner to respondent no.2 and it was apparent from the said certificate that investment made for land and machinery has been made by petitioner no.2 on or before 16.12.1983. i.e. after the cancellation of Provisional Pioneer Registration Certificate Category Class-II. That the petitioner had availed a term loan from GIIC and as such cannot contend that on the basis of assurance given under the scheme the petitioner believed that petitioner should get cash subsidy and thereby the petitioner made huge investment in land and machinery which has changed his financial position. On the said facts, as submitted on behalf of the respondents, the petitioner cannot claim equity in his favour for the application of the doctrine

of Promissory estoppel.

10. That the following observations made by the Supreme Court in the matter of Union of India Vs. Godfrey Philips India Ltd. reported vide AIR 1986 SC 806; being material and relevant for the dispute involved in the present matter are set out hereinunder:

"It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the court would not raise an equity in favour of the person to whom the person or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in Motilal Sugar Mills case (supra) and we find ourselves wholly in agreement with what has been said in that decision on this point."

10.A. Furthermore, in the matter of Vasantkumar Radhakishan Vora Vs. The Board of Trustees of the Port of Bombay (Supra) the observations made by the Supreme Court in Para 12 and 13 also being material and relevant are set out hereinunder:-

"The promissory estoppel cannot be used compelling the Government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public authority to make. The doctrine of promissory estoppel being an equitable doctrine, it must yield place to the

equity, if larger public interest so requires, and it can be shown by the Government or public authority, for having regard to the facts as they have transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it. The Court on satisfaction would not, in those circumstances raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise or representation against Government or the public authority. Equally promissory estoppel should not be extended, though it may be founded on an express or implied promise stamped from the conduct or representation by an officer of the State of public authority when it was obtained to play fraud on the constitution and the enforcement would defeat or tend to defeat the constitutional goals. The private interest would always yield place to the public interest. Though executive necessity is not always a good defence, this doctrine cannot be extended to legislative acts or to acts prohibited by the statute."

11. On the basis of the above stated proposition of law I hold that it would not be equitable in the facts and circumstances of the present case to invoke the doctrine of promissory estoppel in favour of the petitioner and to set aside and quash the impugned decision communicated to the petitioner vide Annexure E dated 15.11.1983. I also hold that the Industry of pulse mill not being eligible to claim any incentive under the scheme announced by the State Government vide GR dated 22.12.77 and GR dated 27.8.1980, it is difficult to accept the submission made on behalf of the petitioner to direct the respondent to issue Pioneer Registration Certificate Category Class-II in favour of the petitioner so as to enable the petitioner to claim benefits under the said scheme.

12. On the basis of aforesaid discussions, the petition fails and stands disposed of as rejected. Rule is discharged. However in the facts and circumstances of the case, no order as to costs.

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